United Nations S/2004/116

Security Council

Distr.: General
13 February 2004

Original: English

Letter dated 13 February 2004 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

Upon instructions from my Government, I have the honour to attach three letters dated 24 December 2003, 21 January 2004 and 4 February 2004, respectively, from H.E. Mr. Isaias Afwerki, President of the State of Eritrea, to the Secretary-General, concerning peace process between my country and Ethiopia, for the information of members of the Security Council, United Nations Member States and the international community at large (see annex I-III).

These communications clearly express Eritrea's position on the matter of the "Special Envoy of the Secretary-General for Eritrea/Ethiopia". Despite the clarity of its position, however, we sense an imposition on Eritrea to accept the new mission of the Special Envoy. My Government has made a decision not to entertain any new process, political or otherwise, before the full and expeditious implementation of the 13 April 2002 decision of the Eritrea-Ethiopia Boundary Commission. President Isaias Afwerki, in all three letters to the Secretary-General, has in no uncertain terms made it clear that the introduction of another process will not serve a useful purpose.

I should be grateful if you would kindly circulate the present letter and its annexes as a document of the Security Council.

(*Signed*) Ahmed Tahir **Baduri**
Ambassador
Permanent Representative

04-24159 (E) 190204

Annex I to the letter dated 13 February 2004 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

Letter dated 24 December 2003 from the President of Eritrea to the Secretary-General

I wish to thank you for your letter of 22 December 2003.

You will recall my recent communications to you explaining the grave situation created by Ethiopia's rejection of the Boundary Commission decision and its violations of the Algiers Peace Agreements. You will also have been informed of the issues clarified by my Chief of Staff to your Special Representative on 16 December 2003.

As you are aware, the implementation of the Algiers Peace Agreements and the decision of the Boundary Commission have become stalled for months now, with no progress whatsoever. This is solely because the Ethiopian Government has flagrantly flouted international law and breached the Algiers Peace Agreements, while it continues to occupy our sovereign territories by force. The stalemate or impasse that you alluded to in your letter has occurred simply because the international community, including your high office, has failed to take the necessary legal measures of enforcement that are warranted by the Algiers Peace Agreements.

If there really was a border dispute between Eritrea and Ethiopia, it has been settled through legal means. And if and when the legal decision on the border dispute is implemented in accordance with the Algiers Agreements, the bilateral ties between the two countries will be fully normalized to contribute positively to the stability of our region. On the other hand, one cannot realistically contemplate normalization of bilateral relations when our sovereign territories remain occupied by force and the legal decision, as well as the rule of law, continue to be trampled.

As you will agree with me, the matter cannot be a subject of mediation. A new mechanism to substitute the Algiers Peace Agreements and the decision of the Boundary Commission will not only be illegal but will also create a dangerous precedent. Indeed, we have no legal right to indulge in a new mechanism.

The only way that we can extricate ourselves from what you have termed as a stalemate or impasse is when the international community compels Ethiopia to respect its treaty obligations and the rule of law and ensures the implementation of the Algiers Peace Agreements.

In conclusion, I wish to urge you again to shoulder your responsibilities to ensure the respect of international law and the rule of law.

(*Signed*) Isaias **Afwerki**

Annex II to the letter dated 13 February 2004 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

Letter dated 21 January 2004 from the President of Eritrea to the Secretary-General

Allow me first to express my regrets for my inability to talk with you on the phone in the past couple of days. I have thought it best to convey to you, through this letter, my thoughts on the critical issues regarding the peace process, as it may not indeed be possible to address them in a telephone conversation in addition to the obvious practical difficulties.

As you will recall, I had tried to underline the grave developments in the peace process that ensued from Ethiopia's rejection of the Boundary Commission decision through my letters to you of 27 October, 13 November and 24 December 2003. Let me avail of the occasion to stress again that we are legally bound not to countenance any "mechanism" or "approach" that aims to substitute the Boundary Commission and the implementation of the decision of the Boundary Commission. My response to your proposal to despatch a special envoy, which remains valid, is rooted in these considerations.

We believe that the only constructive way ahead is for the United Nations and the international community to shoulder their obligations to ensure the respect of the rule of law and the inviolability of international treaties through the full and expeditious implementation of the Boundary Commission decision. We fail to see the wisdom of, and rationale for, focusing on tangential issues and arrangements while the demarcation of the border, which has been delayed by more than one year with detrimental consequences for regional peace and stability, is relegated to the back burner.

It is not surprising to see the Government of Ethiopia toy with deceptive gestures of "good will" in order to disguise its rejection of the decision of the Boundary Commission, its flouting of the rule of law and its invasion of our sovereign territories. Ethiopia is in effect telling us to "look sideways and applaud its decision to allow direct flights ... reopen its embassy ... etc.", while it continues to reject the decision of the Boundary Commission, violate the rule of law and occupy our land.

As I have expressed to you in my previous communications, this roundabout approach will not get us anywhere. On the contrary, it carries the risk of compounding an already precarious situation. As you will agree with me, we cannot be expected to short-change our sovereignty or accept the forceful occupation of our land for the sake of resuscitating the normal ties that exist between two neighbouring countries. This is neither legally nor morally acceptable. I therefore urge you to use the authority of your office to ensure the full respect of international law and thereby create the conditions for a just and sustainable peace.

(*Signed*) Isaias **Afwerki**

Annex III to the letter dated 13 February 2004 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

Letter dated 4 February 2004 from the President of Eritrea to the Secretary-General

I wish to thank you for your letter of 30 January 2004 that I received yesterday.

I regret to have to bore you with repetitive messages. Allow me nonetheless to express my opinion on the points underlined in your letter.

As you will agree with me, the implementation of the Algiers Agreements in accordance with the decision of the Boundary Commission is the legal mandate of the Boundary Commission alone. Furthermore, the Commission long ago issued detailed demarcation directions and specific time frames for implementation. The whole process should have been completed successfully in November 2003. Accordingly, there are no new issues that warrant a new round of discussions or which require a special envoy.

The problem lies in the violation of the Algiers Agreements by Ethiopia, its rejection of the decision of the Boundary Commission and its wilful obstruction of the implementation of the decision. In the circumstances, we expect your good offices to be directed towards Ethiopia with the aim of ensuring the respect of the rule of law and securing Ethiopia's compliance with the provisions of the Algiers Agreements and the decision of the Boundary Commission. Eritrea, on the other hand, continues to fully respect the Agreements it has signed. It has accepted in good faitn the decision of the Boundary Commission and dutifully fulfilled all its legal obligations so as to ensure the speedy demarcation of the boundary in accordance with the demarcation directions of the Commission.

In the light of these facts, we find it fruitless to depart from this legal stance and engage in what will essentially be a public relations controversy concerning whether "we accept or reject" your special envoy. This approach will lead us nowhere but only entangle us in a web of intractable complications.

We cannot, likewise, embrace a new process or "mechanism" on the basis of the diplomacy of the special envoy. Both the Agreements and our legal obligations preclude this eventuality.

I do not wish to waste your time further by dwelling on "dialogue" since I have explained our views on this matter previously. Improvement of our bilateral ties with Ethiopia is predicated on mutual respect and compliance with the rule of law. We cannot thus be requested to ignore this basic prerequisite and entertain such an agenda at this point in time when the peace agreements remain violated and our territory forcibly occupied.

I appeal to you to exert efforts to ensure the implementation of the Boundary Commission decision without delay and thereby uphold the integrity of the Agreements and the respect of international law.

(*Signed*) Isaias **Afwerki**

United Nations S/2004/117

Security Council

Distr.: General
13 February 2004

Original: English

Special report of the Secretary-General on the United Nations Mission of Support in East Timor

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1410 (2002), in which the Council decided to establish, as from 20 May 2002, for an initial period of 12 months, the United Nations Mission of Support in East Timor (UNMISET). In paragraph 8 of that resolution, the Security Council decided that UNMISET would, over a period of two years, fully devolve all operational responsibilities to the East Timorese authorities as soon as is feasible, without jeopardizing stability. In paragraph 13, the Security Council requested the Secretary-General to keep it closely and regularly informed of progress towards the implementation of the resolution, in particular with regard to progress towards achievement of the milestones in the mandate implementation plan.

2. In my report of 6 October 2003 (S/2003/944) on UNMISET, I noted that, in a number of areas, requirements would remain outstanding after 20 May 2004, and indicated that the Secretariat would provide further suggestions as to how those needs could be met in a further report to be submitted early in 2004. In fulfilment of that undertaking, the present report reviews progress towards the achievement of the milestones in the UNMISET mandate, and presents proposals for means by which the international community could assist in promoting the security and stability of Timor-Leste after 20 May 2004.

II. Recent political developments in Timor-Leste

3. Since my previous report, the political institutions of Timor-Leste have continued to strengthen and evolve. While progress has been considerable, the relationships between them are at an early stage of development, and in some respects remain fragile.

4. On 29 September 2003, the National Parliament re-approved without amendment the bill on immigration and asylum, which had been returned by President Gusmão after the Court of Appeal had determined that various articles were unconstitutional, including those that limited the rights of foreigners to own property and to participate in trade unions or political conferences. Apart from the potential impact on foreigners in Timor-Leste, the passage of the Immigration and

04-23319 (E) 170204

Asylum Bill suggests a continuing fragility in the relationship between the courts and Parliament, particularly with respect to judicial review of parliamentary action.

5. The Parliament also approved a bill on subsidiary law that stipulates that, in the absence of Timorese laws or UNTAET regulations on any particular facet of law, Indonesian law, rather than Portuguese law, would be applicable as the subsidiary law in Timor-Leste. This decision reversed the determination of the Court of Appeal in *Public Prosecutor v. Armando dos Santos*, referred to in my previous report. The legislation does not however address the second troubling aspect of the *Dos Santos* case, wherein the Court of Appeal held that regulation 2000/15 authorizing the prosecution of crimes against humanity committed in 1999 violated the principle of non-retroactive application of criminal legislation. This decision contravenes the well-established principle of customary international law entailing individual criminal responsibility for crimes against humanity regardless of their incorporation in national legislation. If followed, it would constitute a significant step backward in holding accountable those responsible for crimes against humanity. An appeal filed by the Prosecutor General of Timor-Leste in the Supreme Court is currently pending.

6. With regard to local governance, on 16 December 2003, the Parliament passed a bill on *suco* elections that seeks to enhance the legitimacy of village chiefs and village councils. The roles and functions of the *suco* chiefs would be defined through a separate decree law before the conduct of elections.

7. The security situation largely remained calm during the reporting period. While occasional demonstrations have been held, they have not presented a major challenge to law and order; they included the observance, on 28 November, of the anniversary of the assumption of office in 1975 by the first independent Government of Timor-Leste, when official State commemorations and activities by other groups and political parties took place without incident. While no new violence was carried out by former militia or armed groups during the reporting period, reports of sightings of armed gangs and criminal elements in districts bordering West Timor continued, as did suggestions of preparations for destabilizing activity by Timorese groups with unclear agendas. The border remains porous, and illegal hunting, trade and crossings continue, as does other criminal activity. In response to suggested security threats, the Government initiated a number of police investigations and arrests to deter such activity, including in particular against the group known as CPD-RDTL.

8. There was a confrontation on 25 January between members of the Timorese armed forces (F-FDTL) and police in the area of Lautem, in which a number of police were briefly detained by F-FDTL officers. In response to the incident, President Gusmão called the following day for the creation of an independent commission to assess the problems faced by F-FDTL and to recommend solutions. On 16 December, 27 soldiers had been dismissed for various previous disciplinary infractions, including prolonged and inexcused absences from duty.

9. In general, the excellent communication that has characterized relations between Timor-Leste and Indonesia continued over the reporting period, supported by commitment at the highest political levels on both sides. It is urgent that, building upon this good will, the two countries make further progress in addressing the problems posed by the continued presence of 28,000 former refugees from Timor-Leste in West Timor. In 2003, only 452 former refugees returned to Timor-

Leste, notwithstanding ongoing efforts designed to promote long-term reconciliation. While the introduction by UNHCR of a resettlement and return plan, which has been agreed with both Governments, has contributed to a reduction of tension in the remaining camps, the situation will remain volatile until this problem is resolved. A durable solution to the outstanding cases of Timorese children separated from their families also needs to be found.

10. The two Governments did not meet their target date of 30 November 2003 for the finalization of agreement on a provisional line for the border, although technical work has continued throughout the past three months. It is essential that every effort be made towards this objective, and towards developing arrangements that would address the needs of the communities on both sides. The importance of continued progress on these bilateral issues and of communication at all levels was highlighted in December 2003, when tensions arose following the conduct of military exercises by the Indonesian armed forces, without the prior knowledge of their Timorese counterparts, on an uninhabited island near Oecussi whose ownership has not been formally agreed by the two countries.

11. The first round of negotiations on the maritime boundary between Timor-Leste and Australia concluded on 14 November 2003. Further talks are scheduled for April 2004. Progress in this area is crucial to permit the development of petroleum resources in the region, and to ensure that benefits are shared in an appropriate and agreed manner.

III. United Nations support to Timor-Leste

A. Assessment process

12. Planning for UNMISET was predicated upon the assumption that Timor-Leste would be in a position to achieve self-sufficiency within a period of two years after independence. As reflected in my previous report, however, it has become increasingly clear that further assistance to Timor-Leste will be crucial in a number of areas after 20 May 2004, when the present mandate of UNMISET will expire. Similar concerns were widely expressed by Member States during discussions within the Security Council in October 2003.

13. In a letter to me dated 2 February, the Prime Minister of Timor-Leste, Mari Alkatiri, requested the presence of a peacekeeping operation for a further year, which would include a battalion of peacekeeping troops with aviation support (see S/2004/114).

14. The Secretariat has undertaken further in-depth analysis of the likely requirements of Timor-Leste after 20 May 2004. In support of the analysis, a technical assessment mission, including civilian, military and police expertise, travelled to Timor-Leste early in January 2004 to review the situation on the ground. During its visit, the mission met with Timorese leaders, non-governmental organizations, and representatives of the local diplomatic community and the World Bank, in addition to engaging in extensive discussion with all components of UNMISET. Members of the mission travelled throughout the country, including to the border regions.

B. Proposals for assistance after 20 May 2004: UNMISET consolidation phase

15. Despite significant progress in each of the Mission's three programme areas, further assistance will be required to consolidate and build upon the gains that have been made to date. A brief analysis of the current status of progress in each programme area is given below, together with detailed proposals for assistance after 20 May 2004.

16. In a limited number of areas, I believe that assistance can be provided only through a continued peacekeeping presence. It is recommended that the Security Council consider the extension of the current Mission for a further 12-month "consolidation phase". It could function under a modified mandate, comprising the following elements:

(a) To provide assistance to the justice system and to core administrative structures critical to the viability and political stability of Timor-Leste;

(b) To contribute to the continuing development of the national police of Timor-Leste;

(c) To contribute to the maintenance of security and stability in Timor-Leste.

17. In all of those areas, internationally accepted human rights principles would continue to form an integral part of advice and capacity-building carried out by UNMISET — consolidation phase.

18. In addition, the Mission could continue to support efforts by the Governments of Timor-Leste and Indonesia to help resolve pending bilateral issues and support their increasing cooperation, in particular their efforts to complete border demarcation and to develop appropriate mechanisms for the management of the border regions; and to ensure that those responsible for serious crimes in 1999 are brought to justice.

19. UNMISET would continue to be headed by my Special Representative, whose office would include the units usually required in multidimensional peacekeeping operations, as well as advisers on gender and HIV/AIDS. It would also include a human rights capacity, which continues to play a crucial role at this formative stage in the development of Timor-Leste. The Mission would retain civilian, police and military components, although in a reduced and modified form as described below, with a view to completing key tasks and enabling Timor-Leste to attain self-sufficiency during a remaining one-year period.

Programme 1
Stability, democracy and justice

1. Support for the public administration of Timor-Leste

20. The development of the public administration of Timor-Leste has continued to progress, and, as reflected in my previous report, recruitment of Timorese personnel is relatively advanced. As foreseen, 30 of the Mission's 100 civil adviser positions were phased out by the end of November, bearing in mind the priorities of the Government of Timor-Leste. The remaining advisers, who are serving largely in the

financial, central management and justice sectors, continue to play a key role in mentoring Timorese counterparts. They have also assisted the Timorese ministries in beginning the process of drafting their organic laws.

21. Their work continues to be supplemented by advisers who are supported by bilateral funding. As has been emphasized in previous reports, while such bilateral assistance has brought important benefits to Timor-Leste, it has also presented serious problems in terms of timeliness and predictability. By January 2004, 20 months after the programme began, only 118 of 209 posts identified for support had been filled, while an average of 63 of the posts have been occupied during the reporting period.

22. Despite the progress that has been achieved, important weaknesses remain where further international assistance will be crucial. The administration continues to lack managerial-level expertise, and has not yet acquired the skills required to discharge a number of essential tasks, including in particular in the vital area of finance, where incapacity could quickly undermine the functioning of the Government and lead to instability. Other key offices, including that of the Inspector-General, the Ministry of the Interior and the Secretary of State for Defence, are beginning to be established and require support.

23. The development of crucial aspects of the administration's legislative and regulatory framework, which is of particular significance for its long-term viability, is also at a very early stage of development. Preparation of a Civil Service Act has begun, "organic laws" for some key ministries have been adopted, and others are in preparation, while the Parliament is currently considering draft legislation that would establish the Office of the Provedor for Human Rights and Justice. It is crucial that further progress occur in this area before the end of the present mandate. However, it is clear that many more such laws, regulations and procedures will remain to be developed after that date.

24. The justice system in Timor-Leste remains particularly weak. Delays and uncertainties within the justice system continued during the reporting period, with negative implications for the functioning of the police and prison services. Only 22 judges have been appointed in the country, and limited availability of public defence lawyers and of judges has greatly restricted or prevented the functioning of courts outside Dili during the period. Long delays are experienced in issuing indictments and listing matters for trial, and many pre-trial detainees, including juvenile detainees, are held for long periods before they come to trial, including some for relatively minor, non-violent crimes. The court system also lacks efficient case management procedures and adequate implementation of human rights safeguards, including the right to appropriate legal representation, translation of proceedings to a language that is understood by all concerned, and lack of guaranteed access to relevant legal information. Ongoing overseas training programmes for judges may, in the long term, help to meet a crucial need; in the short term, however, they compound the problem created by the shortages. Some of the institutional weaknesses are now being addressed through a programme supported by the United Nations Development Programme (UNDP), while bilateral efforts are also playing an important role, but further support will be crucial. This includes the need to make available further judicial capacity to avoid an increasing backlog within the justice system.

25. The retention of civilian adviser positions within UNMISET for a further year will be essential to safeguard and build upon progress to date. To reflect changing needs and priorities, this programme could be reorganized to become "support to the public administration and justice system of Timor-Leste", with adjustment of the civilian adviser positions accordingly. This assistance would make a vital difference in supporting the country's efforts to establish fundamental legal and institutional frameworks, and would help to ensure the continued functioning and stability of vital institutions while local capacity is developed and long-term assistance is secured from other sources.

26. On the basis of review by the Government and UNMISET, together with further analysis by UNDP and the Secretariat, it is envisaged that some 58 advisers could be included in UNMISET for a further year. Of those, 19 (33 per cent) would be related to finance; 16 (27 per cent) would provide assistance in other key ministries; and 8 (14 per cent) would serve within various organs of Government (within the Offices of the President and Prime Minister, the Parliament or the Council of Ministers), where they would largely focus on providing legal advice at the time of establishment of major institutions. A further 15 (26 per cent) would focus on justice; they would include a number of new judges, who would help to ensure that the court system remains functional and to stem an increase in the backlog of pending cases at the appellate level, while supporting the training of Timorese judges, on the premise that failure to meet these needs risks undermining the nascent rule of law in Timor-Leste.

27. It is apparent that the effectiveness of these additional efforts will also depend upon continuing action on the part of the Government of Timor-Leste, which would need to adopt legislation in several important areas. This includes in particular the Civil Service Act and various organic laws for ministries; the law creating the Office of the Provedor; and strong anti-corruption legislation. In addition, in view of the limited time that is available and considering the difficulties experienced to date, it is desirable that an expedited recruitment process be agreed with the Government of Timor-Leste as soon as possible.

28. The provision of civilian posts through UNMISET can meet only the most critical of the Government's needs. The Government of Timor-Leste, together with UNDP, is preparing a complementary list of other key positions for consideration for assistance by Member States.

2. Assistance in the conduct of investigations of serious crimes

29. The process of prosecution and trial of those accused of serious crimes continued over the past three months. The Special Panels for Serious Crimes issued 15 judgements, leading to a total figure of 44 such decisions since the Panels' inception. Of the 81 indictments submitted to date by the office of the Deputy General Prosecutor for Serious Crimes, 48 cases are still pending. In only 17 of the cases are the accused currently in Timor-Leste; in the remaining 30, the accused are not within the country. In addition, a number of cases, including several related to the "priority" cases, referred to in previous reports, are pending at the appellate level.

30. The Serious Crimes Unit continued to investigate and prosecute serious crimes committed in 1999, while undertaking the training of national staff, including prosecutors, case managers, national police investigators, data coders and evidence

custodians. The preparation of further indictments is ongoing, including one related to the murder of two local United Nations staff members.

31. UNMISET continues to provide defence services for all those who have been arrested and indicted, and during the reporting period obtained the first full acquittal of a defendant alleged to be affiliated with former militia. Owing to the reluctance of the people concerned, fear of retribution and the lack of financial means and transport, it has been difficult to secure defence witnesses. Problems are also being encountered in the capacity-building of local defenders, as local defence lawyers, who are in any case few in number, are often quite reluctant to align themselves with any known group of former militia.

32. The provision of assistance for a further year is essential to make progress towards completing the serious crimes process, including in particular the 10 "priority" cases. More broadly, it would help to address a potential irritant to future relations within the Timorese population, promote confidence in the justice system, and, in accordance with the priorities expressed by the Security Council, reinforce the message that those who perpetrate such crimes will not enjoy impunity. This should be achieved through a continuation of international support, through UNMISET, for investigations, prosecutions and defence, as well as for the Special Panels for Serious Crimes. While the level of assistance would be similar to that currently provided, an increasing emphasis would be placed on defence and the judiciary, rather than investigation, reflecting the current phase in the process. International staff would also assist in the training of Timorese counterparts, including prosecutors, case managers and national police investigators.

33. The great majority of those indicted for serious crimes remain outside of the country. Progress in this area will also depend upon the support of other Member States, whose close cooperation with international and Timorese officials will be crucial. I firmly believe that the perpetrators of serious crimes in 1999 in Timor-Leste must be brought to justice.

34. The Commission for Reception, Truth and Reconciliation has continued to play an important, complementary role by providing a community-based solution for less serious crimes committed in connection with the political conflict. Two national public hearings were completed, in November on massacres and in December on the internal Timorese political conflict of 1975, when principal national leaders, including the President, the Prime Minister and the Minister for Foreign Affairs, testified publicly about the events of that period for the first time in Timorese history. By the end of December, the Commission had completed more than 600 cases involving local community-based reconciliation, of over 1,500 applications received. The Commission hopes to complete its field work by the end of March 2004, when it will commence work on its final report to be submitted to President Gusmão in October 2004, while developing a plan for implementation of its recommendations. Continuing international and bilateral support to this process for a further year can favour healing and longer-term stability within the country.

Programme II
Internal security and law enforcement

35. The development of the Policia Nacional de Timor-Leste (PNTL) remains a central and core aspect of the UNMISET contribution to the country's security and stability. Since the handover of patrolling responsibilities in Dili District on 10 December 2003, PNTL has assumed responsibility for routine policing throughout the country. As at 6 February 2003, PNTL included 3,024 trained police officers and 33 civilian support staff. Over 20 per cent of PNTL officers are women, representing a high proportion in comparison with analogous figures worldwide. Management of PNTL continues to be undertaken by the United Nations Police Commissioner, and there is progressive handover of various aspects of headquarters functions. A group of 200 police advisers continues to assist with specialized tasks and to mentor Timorese police, while maintaining a presence in all districts, while the 125-officer formed police unit remains available to respond to major cases of civil disorder. Over the past three months, UNMISET has also continued to support the work of the PNTL Institution Strengthening Committee.

36. Training courses have been revised and expanded from four to six months, while in-service training is provided by PNTL for those who have completed their initial training programme. Other training is being provided bilaterally, including specialist training courses in the fields of surveillance and intelligence, as well as supervision and management. All courses and in-service training emphasize respect for human rights and issues of professional standards.

37. With regard to the specialized units of PNTL, the Rapid Intervention Unit is continuing with intensive retraining; in view of progress to date, the Unit appears likely to attain the requisite level of capability by 20 May 2004. The Border Patrol Unit has 255 of 300 officers, and United Nations police and military are providing further mentoring to those who are deployed, while additional recruits are currently in training. The development of the Rapid Deployment Service, which had been intended to play an important role in maintaining security in the border districts, has been more problematic. Officers were selected and began training only in January 2004, and progress has been complicated by the lack of key equipment.

38. Furthermore, despite the training efforts reported above, fundamental problems remain. An analysis of complaints statistics identified a number of institutional and operational weaknesses within PNTL, particularly relating to police behaviour. Police misconduct, including violations of human rights protected under the law of Timor-Leste, has been increasingly reported. Disturbing reports of the excessive use of force, assaults, negligent use of firearms, criminal activities and corrupt practices continue to be received.

39. In summary, while PNTL has made significant strides towards assuming full responsibility for the maintenance of law and order in Timor-Leste, its capacity, experience and policy frameworks remain limited, particularly with regard to its special units. Furthermore, the Government has yet to define the respective roles of PNTL and F-FDTL for internal security, including in particular the contribution that would be expected from F-FDTL in support of the civil power, and there is a consequent lack of mechanisms or habits of coordination between the two institutions. Greater clarity regarding the responsibilities is essential to effectively

maintain security in Timor-Leste after 20 May 2004, and to allow the international community to continue to build upon the foundations that have been laid.

40. International civilian police can make a crucial contribution to the development of PNTL as a non-political, professional police service through further mentoring and monitoring activities, while promoting the self-sufficiency and sustainability of the service by assisting it to define basic policies and standard operating procedures. This could be achieved through retention after 20 May 2004 of a component of 157 police advisers, including some civilians, to continue this programme of UNMISET activity with the adjusted focus of "support to the development of law enforcement in Timor-Leste". It is envisaged that this component would include some advisers who would serve in the field, while other international police would provide advice to various special units or in such specialized areas as counter-terrorism, investigations or forensics. Still others would be dedicated to management skills. The staffing level of the component could be reviewed by the end of the year. The ability of the police advisers to make a significant contribution will depend upon close cooperation with bilateral efforts in this area, which are expected to be extensive. Planning could be adjusted to recognize bilateral assistance that becomes available on the ground prior to the conclusion of the mandate period.

41. Timor-Leste would assume responsibility for response in the case of civil disturbance after 20 May 2004. With the country's assumption of full executive authority for policing, it would be appropriate that all operational policing activity be undertaken by PNTL, in order to maintain a single line of command and control. Extensive analysis of Timorese capacity on the ground indicates that, as noted above, this element of PNTL would be adequate to assume its responsibilities by 20 May. Intensified training of the Timorese Rapid Intervention Unit will continue until the end of the present mandate, facilitated by the deployment of an UNMISET formed police unit. It is also proposed that UNMISET would retain an advisory and monitoring capacity in this area after 20 May 2004.

42. The effectiveness, and indeed the safety, of the international unit in responding to a riot have been predicated upon the availability of substantial back-up by international military, if required. Similarly, it is essential that the role of F-FDTL in backing up such efforts by national police be clarified well before the conclusion of the present mandate, in order to enable the Security Council to evaluate these proposals.

43. Necessary steps would include the adoption of an "organic law" on police and a defence act that would define the responsibilities of F-FDTL; the adoption of regulations clearly identifying the respective roles of PNTL agencies, including the special units, and of PNTL and F-FDTL, and the relationships between them; the establishment of oversight mechanisms for PNTL and stricter mechanisms for specialized units; the establishment and strict implementation of the Code of Conduct for PNTL; and the establishment of coordination mechanisms and mechanisms for decentralized decision-making in the border districts. The United Nations stands ready to assist as appropriate.

44. The ability of UNMISET to assist in the development of PNTL would also be favoured by the adoption of provisions that would allow it to participate in the discussions of the Government's Committee on Internal Security when policy-related issues are being discussed.

Programme III
External security and border control

45. In October, the Border Police Unit assumed responsibility for all junction points along the 259-kilometre Tactical Coordination Line. Despite their very limited numbers and difficult working circumstances, the officers of that Unit have shown a generally high level of motivation. Their professional approach and techniques have however relied in some respects upon a level of logistical capacity that has proved extremely difficult to maintain, and may need to be reviewed. As noted above, the development of the Rapid Deployment Service, which represented an important element in plans for the handover of responsibility for security in the border districts, has not progressed as planned. It was envisaged that the Rapid Deployment Service would be deployed in Oecussi District early in 2004, and subsequently in the Cova Lima and Bobonaro Districts. In view of the delay in the recruitment, equipping and training of the Service, it will not be possible to create an effective rapid deployment capability within PNTL to deal with armed groups in the border districts before 20 May 2004.

46. The development of F-FDTL is also progressing, but it continues to be hindered by constraints in terms of resources, logistics and availability of skilled personnel. Furthermore, as noted above, the precise functions of F-FDTL have yet to be defined by law, through a defence act, and through additional legislation and regulations that would codify its role in support of the civil power. The confrontation referred to earlier between officers in the Timorese armed forces on one hand and police and civilians on the other suggests problems with regard to morale and discipline, which are likely to be exacerbated by this lack of clarity.

47. The visible presence of the UNMISET military component, supported by regular patrolling, continues to promote calm in the country. Following the downsizing and restructuring which was carried out as foreseen in November and December 2003, the military component comprises 1,750 personnel, including 78 military observers and two infantry battalions. A two-company battalion based in Bobonaro District is deployed or patrols throughout the western districts and along the Tactical Coordination Line, while a three-company battalion based in Dili is responsible for the remainder of the country, apart from the eastern district of Lautem, where F-FDTL is deployed. Each UNMISET battalion maintains a permanent presence in some districts and undertakes patrols in other areas, while maintaining a capability to respond to security threats throughout its area of operations. This includes visiting patrols into the border districts of Suai and Oecussi, where the military component no longer maintains a large-scale presence.

48. Close collaboration between Indonesian and Timorese forces on the ground is critical for security in the border regions. The cooperation of the Border Patrol Unit with Indonesian counterparts, who are generally military rather than police, is supported by the efforts of UNMISET military observers, who continue to facilitate interaction through permanent Border Liaison Teams close to key junction points and conduct regular visits to other junction points using mobile patrol teams. UNMISET also continues to support close collaboration between Timorese agencies. Members of PNTL and F-FDTL have been incorporated within the Joint Information Centre at the headquarters of the UNMISET military component, where international military and police officers work with Timorese counterparts on day-to-day information management and analysis. Through their interaction with the

UNMISET military component, F-FDTL officers can improve their understanding of the functioning of military headquarters and develop their skills in logistic planning, communications, map reading, and other practical areas.

49. In summary, UNMISET continues to play a crucial role while Timorese security capacity is under development. The ability of Timorese agencies to respond without assistance to security incidents would be very limited at a time when they are thinly stretched and poorly supported, their responsibilities are ill-defined, and their relations with their Indonesian counterparts are at an early and fragile stage of development. At the same time, there appears to be a lack of confidence within the Timorese public in the security situation after May 2004 that could become self-fulfilling, particularly if exploited by potential troublemakers in the area.

50. At a time when either calm or instability can become self-reinforcing, it would be advisable to retain a military component within UNMISET for a further year, with modified tasks, to reduce the risk of destabilizing incidents. To reflect the change in focus that would be appropriate after 20 May, this programme could be designated "support to the security and stability of Timor-Leste". This minimal presence would be deployed as an element of a smooth downsizing and withdrawal of international forces, rather than a long-term solution, and would focus in particular on the western districts, where the risks of instability are greatest, and Timorese capacity is not yet in place. Maintenance of an international presence for an additional year would allow the region to reach a critical threshold of stability, and permit the development of the capacity of Timorese security agencies and their relationship with Indonesian counterparts, an increase in local confidence, and progress in agreement on the border, so that the presence of military liaison officers is no longer required.

51. Assistance after 20 May 2004 could include the retention of some 42 military liaison officers, based in Oecussi and the border districts, who would continue to facilitate contacts between the two sides, to support demarcation efforts, and to monitor security-related developments. Other tasks could include observing and reporting upon the situation, patrolling, and providing advice to Timorese counterparts. Their support to relationships at the working level would complement and reinforce political efforts to address such longer-term issues as agreement on the border, and the resolution of the problem of former refugees in the region.

52. In view of the uncertainty of their area of deployment, and the limited capacity of Timorese security agencies, it is also proposed that a capability for protection and extraction be retained within the peacekeeping operation for a further year. Such a presence could have the additional benefit of promoting calm in its area of deployment and reassuring the Timorese public.

53. The military component's tasks could include the provision of armed escort and protection, air mobility, and air or land evacuation, if required, to military liaison officers or other United Nations staff. In addition, to promote continued calm and to avoid the potentially destabilizing impact of too abrupt a conclusion to the international presence, this component could conduct regular ground and air patrols, including in areas where no permanent presence is deployed; and maintain a presence within the community through civil military cooperation. The component could also help to address key weaknesses in the Timorese forces by providing support, in extremis, in such areas as logistics, transportation, communications and information, to efforts by Timorese agencies to respond to major natural disasters or

serious threats to security and stability. This support would not include response to civil disturbances, which would be the responsibility of Timorese agencies. To ensure the integrity of international command, assistance would be provided within a specific framework that would be established in detailed bilateral agreements. It would be undertaken on the instructions of the Special Representative of the Secretary-General, who would draw on input from senior military and police officers in the Mission in deciding to authorize such support, and would follow a request that would need to be made by the Prime Minister.

54. Various means could be considered to undertake these tasks. However, the most appropriate would appear to be retention of a portion of the formed military component of UNMISET. It is estimated that this function could be undertaken by an infantry company of 120, together with support and aviation, based in the border district of Bobonaro. The military component would include a small headquarters, and would have an integrated chain of command for the military liaison and formed military components. The total size of the military component, with all of these elements, could be approximately 350. The configuration and tasks of this component could be reviewed by the end of 2004.

55. In order for Timor-Leste to pursue self-sufficiency in the area of security, complementary bilateral efforts will also be essential. This will include the provision of information, and training in intelligence analysis. Timor-Leste will also require long-term assistance in maintaining its road networks, which are crucial for security, but present a daunting logistical and financial challenge.

C. Role of the United Nations system

56. While significant progress has been achieved in the implementation of the National Development Plan, very considerable development challenges remain, in particular the decline in development assistance and the unexpected shortfall of domestic revenues, which have had adverse effects on social and economic development. Revised projections foresee an increase in the budget deficit by $66.7 million over the next four years, to a total of $136 million, largely as a result of delays in the exploitation of the Bayu-Undan oil and gas field. Timor-Leste continues to face economic contraction — an estimated decline of 2 per cent in the gross domestic product in the current fiscal year — although a modest recovery is expected in 2005/06. These problems were discussed at some length during the fourth Timor-Leste Development Partners meeting, which was hosted by the Government in Dili from 3 to 5 December 2003. The Government sought additional assistance for its current budget of $10 million for fiscal year 2004/05 and of $30 million per year during the period from 2005 to 2007.

57. Progress was made in a number of areas in recent months, through collaboration between the Government and United Nations agencies, funds and programmes. In response to the food shortages that occurred in the past eight months, as reflected in previous reports, the Government has signed a memorandum of understanding with the World Food Programme on food shortage emergency operations, established a food aid management unit and designated a national disaster management office to enhance coordination in emergency responses. The promotion of employment for vulnerable groups has continued through the RESPECT programme. At the same time, United Nations agencies, funds and

programmes, together with the Bretton Woods institutions and development partner countries, continue to play a crucial role in supporting the country's efforts towards long-term development. In the health sector, the Government, supported by the United Nations Population Fund, the World Health Organization and UNICEF, has launched a national campaign against leprosy, for HIV/AIDS prevention, and for vaccination of children against measles, during which 97 per cent of targeted children were vaccinated. More than 1,100 Timorese have received training in various fields of health care, while projects supported by the World Bank-administered Trust Fund for East Timor include the construction of community health centres and primary schools. Continued support by the Asian Development Bank, United Nations organizations and development partners has resulted in the improvement of water and power supply as well as sanitation in Dili and the districts. UNDP-assisted projects for the rehabilitation of physical infrastructure include several irrigation projects, while the second phase of a rehabilitation project for Dili Port was completed, enabling the port to perform efficiently on a 24-hour basis since late December 2003.

58. Particularly in view of the delayed arrival of revenues from petroleum development, which can exacerbate such problems as unemployment and the inability to deliver services to the local population, continued and enhanced cooperation between UNMISET and the wider United Nations system of agencies, funds and programmes, as well as other bilateral actors and civil society, will be essential in the coming year. In order to maintain and build upon cooperation to date, the Resident Coordinator could continue to serve as Deputy to my Special Representative. In addition, the measures that could be retained and strengthened include the harmonization of United Nations programme and budgetary cycles with each other and with the National Development Plan (2003-2007), as reflected in the United Nations Development Assistance Framework 2003-2007; the coordination of United Nations system action through common priority areas that are linked to national priorities and to the Millennium Development Goals, including livelihoods, poverty alleviation, health, education and human rights; weekly meetings of heads of United Nations agencies, funds and programmes, together with UNMISET staff, chaired by the Deputy Special Representative; and inter-agency theme groups on gender, HIV/AIDS, human rights and public information that meet each month or two at a technical level. In addition, regular meetings would continue to be held by the Special Representative with the heads of agencies, funds and programmes on matters of common interest.

IV. Financial aspects

59. The General Assembly, by its resolutions 57/327 of 18 June 2003 and 58/260 of 23 December 2003, appropriated the total amount of $208.8 million for the maintenance of UNMISET for the period from 1 July 2003 to 30 June 2004.

60. Should the Security Council decide to extend UNMISET as proposed in paragraph 63 below, I shall seek the necessary funding for the operation of the Mission from the General Assembly.

61. As at 31 January 2004, unpaid assessed contributions to the special account for UNTAET/UNMISET amounted to $140.8 million. The total outstanding assessed

contributions for all peacekeeping operations at that date amounted to $2,211.2 million.

V. Observations and recommendations

62. Despite the extraordinary achievements that have been made by the Government and people of Timor-Leste over the past 18 months, formidable challenges remain as the current mandate of UNMISET draws to a close. While bilateral donors and the United Nations agencies, funds and programmes and multilateral financial institutions can make a valuable contribution to the continuing development of Timor-Leste, further assistance will be essential to consolidate and build upon the gains that have been made in an atmosphere of peace and security.

63. I am convinced that a comparatively modest additional effort can make a crucial difference in broadening the scope and increasing the sustainability of the remarkable achievements that have already been made, and allowing Timor-Leste to reach a threshold of self-sufficiency. In particular, assistance for one more year is crucial to permit the continuing function of the judiciary and key ministries, while supporting the development of necessary skills and the establishment of policy and legislative frameworks; to enable the still very inexperienced police to gain additional substantive skills and reinforce its professional values; and to provide additional assistance and support in the management of security in the border region, where Timorese capacity is at an early stage of development.

64. In this context, I recommend the extension of UNMISET for a further year, in a reduced size, and with a modified mandate. As reflected above, I recommend the retention of a component of 58 civilian advisers who would provide advice and support to the public administration and justice system; the continuing provision of support to prosecutions and trials related to the serious crimes committed in Timor-Leste in 1999; the retention of a group of 157 civilian police advisers who would assist the continued development of Timor-Leste's police; and the deployment of 42 military liaison officers, who would monitor security-related developments and would support demarcation efforts. In addition, I recommend that a security force be deployed to provide protection for the military liaison officers. This force would also maintain a reassuring presence in the border regions, and would provide a quick reaction capability if required. As reflected above, it is recommended that the force comprise some 310 military personnel; it would include an infantry company with airborne capability as well as other support.

65. These recommendations focus on areas that have direct implications for the security and stability of Timor-Leste, and where bilateral assistance is unavailable or not well suited to meet requirements. However, in view of the fact that progress will depend upon the closest possible coordination with related bilateral programmes, they would allow for adjustment to take account of relevant bilateral assistance that materializes prior to the end of the mandate period. The recommendations include a strategy for transition that will allow this continued peacekeeping assistance to be phased out within a year, mostly on the basis of developing sufficient Timorese capabilities, although it relies in some cases upon transition to bilateral assistance, and they would support the development of structures that would be sustainable for the country in the long term.

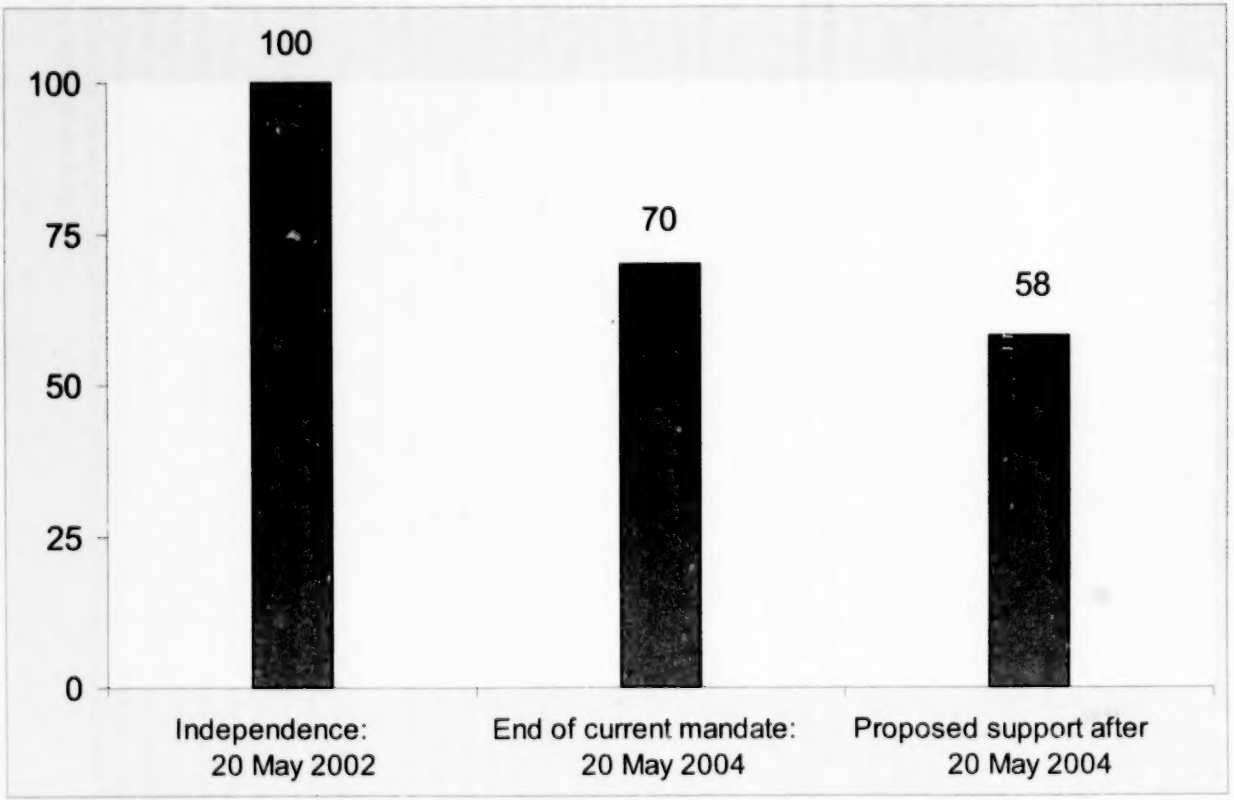
66. The validity of these proposals, and the benefit that could be achieved through their adoption, will depend upon a number of key political decisions. These include in particular the adoption by Timor-Leste of a Civil Service Act, of the law creating the Office of the Provedor, and of strong transparency and accountability legislation against corruption; the adoption of legislation including the organic law for PNTL, a defence act for F-FDTL, and other regulations and policies that would define the respective relationships between PNTL and F-FDTL and between various PNTL units; and the establishment of oversight mechanisms for PNTL, and promulgation and strict implementation of a code of conduct. It is essential that, in the coming months, further progress be made in these key areas, to enable the Security Council to evaluate the proposals set out above well in advance of the end of the current mandate. The United Nations stands ready to provide advice and assistance in this effort as required.

67. Progress will also depend upon continuing joint efforts by Indonesia and Timor-Leste in a number of areas related to security and justice. As indicated above, this includes the adoption of a realistic but effective timetable for the determination of key decisions relating to the border, and the resolution of the continuing presence of former refugees in the area. Strong cooperation in the area of prosecution of serious crimes is also essential.

68. In conclusion, I would like to pay tribute to the dedicated efforts of my Special Representative, Kamalesh Sharma, and to the civilian, military and police components of UNMISET.

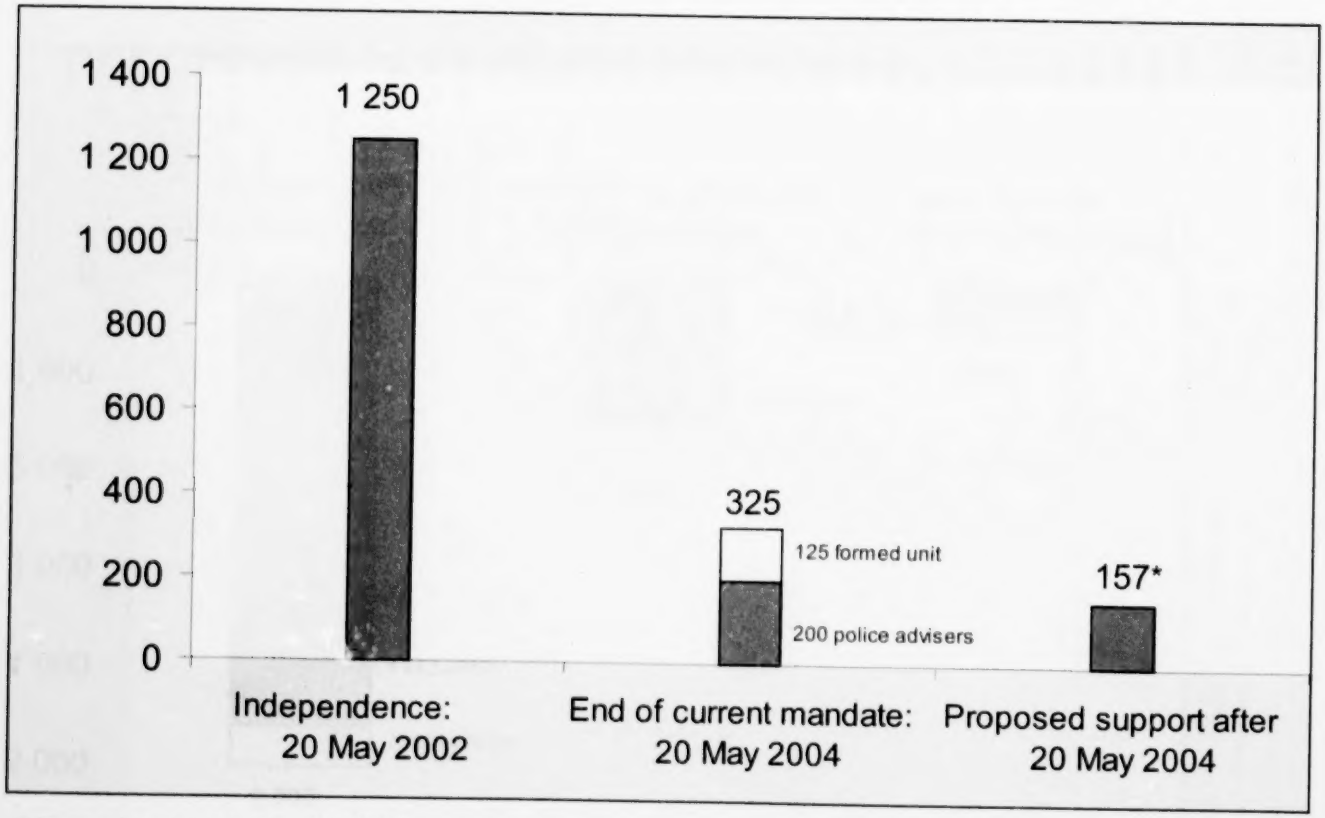
Annex I

United Nations Mission of Support in East Timor: civilian advisers to public administration



Annex II

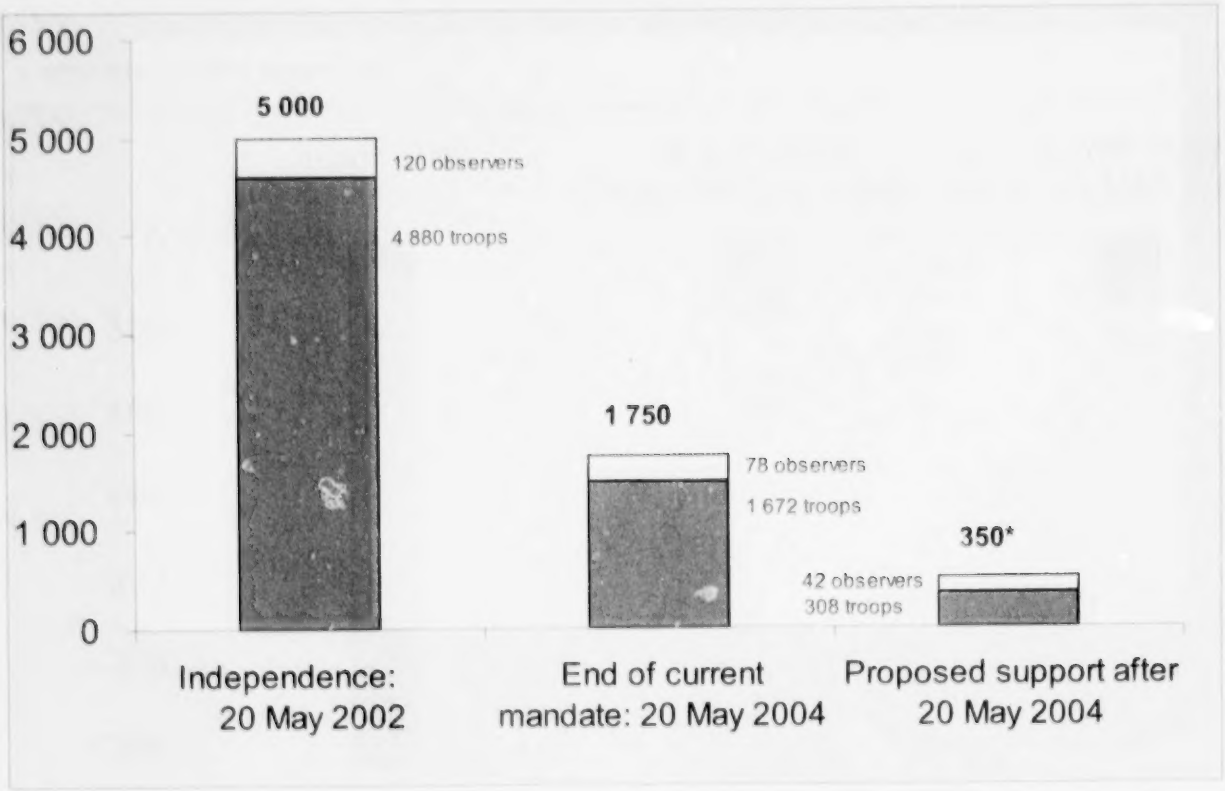
United Nations Mission of Support in East Timor: civilian police component



* Figure to be reviewed in December 2004.

Annex III

United Nations Mission of Support in East Timor: military component



* Figure to be reviewed in December 2004; includes tentative figures for support element and aviation.

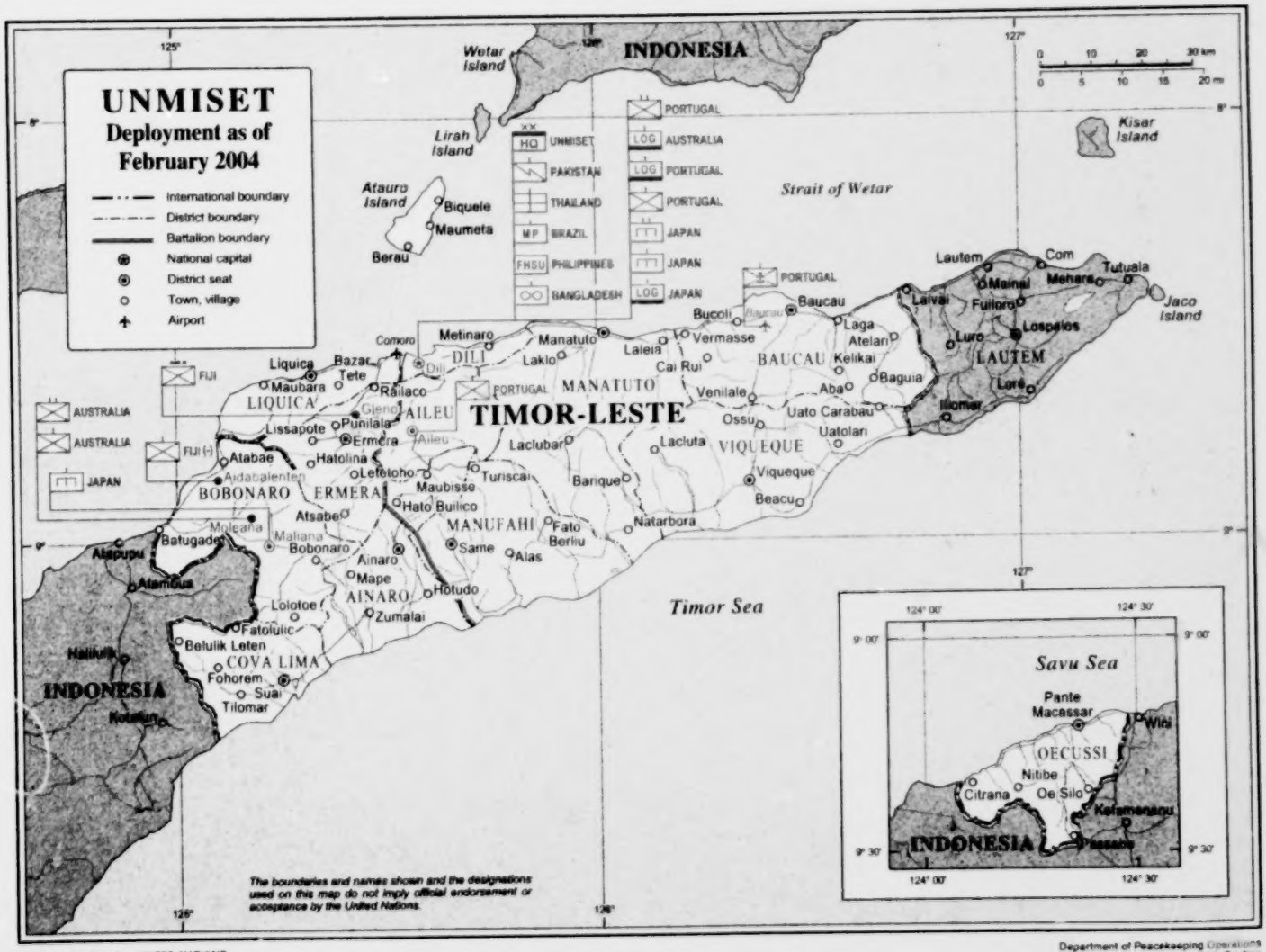
Annex IV

United Nations Mission of Support in East Timor: civilian police and military strength

(as at 1 February 2004)

	Civilian police	*Troops*	*Military observers*	*Total*
Argentina	1	-	-	1
Australia	21	309	7	337
Bangladesh	9	34	5	48
Bolivia	-	-	2	2
Bosnia and Herzegovina	5	-	-	5
Brazil	5	59	11	75
Canada	7	-	-	7
China	16	-	-	16
Denmark	-	-	2	2
Fiji	-	180	-	180
Ghana	5	-	-	5
Ireland	-	1	-	1
Japan	-	377	-	377
Jordan	-	-	4	4
Kenya	-	-	2	2
Malaysia	140	6	10	156
Mozambique	-	-	2	2
Nepal	3	4	3	10
New Zealand	-	3	4	7
Niger	1	-	-	1
Norway	2	-	-	2
Pakistan	9	74	3	86
Philippines	16	41	7	64
Portugal	20	521	1	542
Republic of Korea	-	3	-	3
Russian Federation	1	-	2	3
Samoa	4	-	-	4
Serbia and Montenegro	-	-	2	2
Singapore	-	3	-	3
Spain	5	-	-	5
Sri Lanka	6	-	-	6
Sweden	1	-	2	3
Thailand	8	51	6	65
Turkey	1	-	1	2

	Civilian police	*Troops*	*Military observers*	*Total*
Ukraine	3	-	-	3
United Kingdom of Great Britain and Northern Ireland	4	-	-	4
United States of America	18	-	-	18
Uruguay	-	-	2	2
Zambia	3	-	-	3
Zimbabwe	5	-	-	5
Total	**319**	**1 666**	**78**	**2 063**


UNMISET
Deployment as of
February 2004
International boundary
District boundary
Battalion boundary
National capital
District seat
Town, village
Airport
INDONESIA
Wetar Island
Lirah Island
Kisar Island
Atauro Island
Biquele
Maumeta
Berau
Strait of Wetar
Timor Sea
TIMOR-LESTE
DILI
LIQUICA
AILEU
MANATUTO
BAUCAU
VIQUEQUE
LAUTEM
BOBONARO
ERMERA
MANUFAHI
AINARO
COVA LIMA
OECUSSI
Savu Sea
Pante Macassar
Wini
Nitibe
Citrana
Oe Silo
Kefamenanu
Passabe
Lautem
Com
Tutuala
Mainal
Mehara
Laivai
Fuiloro
Jaco Island
Lospalos
Luro
Lore
Ilomar
Metinaro
Manatuto
Laleia
Vermasse
Bucoli
Baucau
Laga
Atelari
Kelikai
Baguia
Venilale
Aba
Ossu
Uato Carabau
Uatolari
Viqueque
Beacu
Natarbora
Barique
Laclubar
Lacluta
Turiscai
Maubisse
Hato Builico
Fato Berliu
Same
Alas
Hatolina
Ermera
Punilala
Railaco
Liquica
Maubara
Bazar Tete
Comoro
Dili
Laklo
Cai Rui
Lissapote
Atabae
Aidabalente
Lefetoho
Atsabe
Bobonaro
Ainaro
Mape
Hotudo
Zumalai
Lolotoe
Fatolulic
Belulik Leten
Fohorem
Suai
Tilomar
Batugade
Atapupu
Atambua
Halilulik
Kupang
Maliana
Molegana
Aileu
Glenn
Ainaro
Hatolina
Ermera
Bobonaro
Maubisse
Lefetoho
Turiscai
Laclubar
Same
Alas
Fato Berliu
Natarbora
Barique
Viqueque
Lacluta
Venilale
Aba
Baucau
Bucoli
Vermasse
Laleia
Manatuto
Metinaro
Laklo
Dili
Comoro
Railaco
Punilala
Ermera
Lissapote
Atabae
Aidabalente
Lefetoho
Maubisse
Hato Builico
Atsabe
Bobonaro
Ainaro
Mape
Hotudo
Zumalai
Lolotoe
Fatolulic
Belulik Leten
Fohorem
Suai
Tilomar
Batugade
Atapupu
Atambua
Halilulik
Kupang
Maliana
Molegana
Aileu
Glenn
Liquica
Maubara
Bazar Tete
Ilomar
Lore
Luro
Lospalos
Laivai
Fuiloro
Mainal
Mehara
Com
Tutuala
Jaco Island
Uatolari
Baguia
Kelikai
Atelari
Laga
Uato Carabau
Ossu
Aba
Venilale
Cai Rui
Laleia
Vermasse
Bucoli
Baucau